UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,581	01/27/2004	Akio Uchiyama	17406	3837

23389 7590 11/14/2005

SCULLY SCOTT MURPHY & PRESSER, PC
400 GARDEN CITY PLAZA
SUITE 300
GARDEN CITY, NY 11530

EXAMINER	
KASZTEJNA, MATTHEW JOHN	
ART UNIT	**PAPER NUMBER**
3739	

DATE MAILED: 11/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/766,581	UCHIYAMA, AKIO	
	Examiner	Art Unit	
	Matthew J. Kasztejna	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 October 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *11,14-16,24 and 26-36* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *11,14-16,24 and 26-36* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *27 January 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Notice of Amendment

In response to the amendment filed on October 11, 2005, amended claims 11, 14-16, 24 and 27-28; canceled claims 1-10, 12-13,17-23 and 25; and new claims 29-36 are acknowledged. The following new grounds of rejection are set forth:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 11, 14-16, 24, 27, 29-32, and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0103417 to Gazdzinski in view of U.S. Patent No. 6,724,418 to Takahashi.

In regards to claims 11 and 15, Gazdzinski discloses a capsule medical device 300 inserted into a body cavity, comprising: a sensor 1010, a transmitting device for transmitting sensing data acquired by the sensor to an external device outside the body cavity (see Paragraph 0015); a receiving device 1027 for receiving data from outside the capsule medical device the received data being inherently generated by external signal processing of the sensing data (see Paragraph 0038); and a storage device 1026 wherein storage data stored therein can be rewritten on the basis of the data received by the receiving device (see Paragraph 0015). A flash memory of the digital signal

processor may be modified by way of program data transmitted to the probe via the data transfer sub-circuit. Furthermore, Gazdzinski discloses a capsule medical device wherein the capsule medical device has an image-acquiring device 1010 being a CCD image sensor; and the image-acquiring device operates on the basis of data parameters stored in the storage device (see Paragraph 0067). However, Gazdzinski is silent with respect to a detecting circuit provided in the external device for calculating a luminance distribution of the images and a correction amount calculating circuit provided in the external device for generating data parameters from the luminance distribution calculated by the detecting circuit. Takahashi teaches of an analogous endoscope having a luminance calculator, which successively calculates a luminance value indicating brightness of the object image, and a determiner (see Fig. 1 and Col. 2, Lines 5-40). It would have been obvious to one skilled in the art at the time the invention was made to include a detecting circuit and a correction amount calculating circuit in the apparatus of Gazdzinski to generate transmission information on the basis of data transmitted by the capsule medical device and received by the external device to provide a surgical capsule that can rapidly adjust brightness of an object image displayed on a monitor by controlling the quality of light radiating from the capsule as taught by Takahashi.

In regards to claim 14, Gazdzinski discloses a capsule medical device wherein the image-acquiring device has an illumination device 1014; and the illumination device operates on the basis of data parameters stored in the storage device (see Paragraph 70).

In regards to claim 16, Gazdzinski discloses a capsule medical device wherein the image-acquiring device has an image data-compressing device; and the image data-compressing device operates on the basis of data parameters stored in the storage device (see Paragraph 0015).

In regards to claims 24 and 36, the apparatus of Gazdzinski and Takahashi is considered to be inherently capable of performing the recited method claims (see paragraph 0088).

In regards to claims 27 and 31, Gazdzinski discloses a capsule medical device but is silent with respect to wherein the detecting circuit is a color balance and brightness detecting circuit for calculating a histogram of brightness in the image and wherein the correction amount calculating circuit adjusts color image values and illumination values. Takahashi teaches of an analogous endoscope wherein luminance signals are fed to a histogram processing circuit 16, from which the average luminance value is calculated and adjust the brightness of an object image displayed on a monitor (see Col. 4, Lines 9-34). It would have been obvious to one skilled in the art at the time the invention was made to include a detecting circuit able to adjust the illumination values in the apparatus of Gazdzinski in order to better control light parameters and provide for optimization of image quality as taught by Takahashi.

In regards to claims 29-30, 32, and 34-35, Takahashi discloses a capsule medical device, wherein the correction amount calculating circuit has a reference data which is previously stored and calculates the data parameters on the basis of the reference data and wherein said reference data is a histogram of standard luminance

distribution positions (see Figs 4-5 and Col. 2, Lines 25-30). Furthermore, the correction amount calculating circuit calculates an effective imaging range of the image-acquiring device from the luminance distribution of the image (see Fig. 6). It would have been obvious to one skilled in the art at the time the invention was made to calculate data parameters on the basis of reference data in the apparatus of Gazdzinski to ensure that the brightness of the object image displayed on the monitor is maintained at a constant level and provide for optimization of image quality as taught by Takahashi.

Claims 26, 28 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0103417 to Gazdzinski in view of U.S. Patent No. 6,724,418 to Takahashi in further view of U.S. Patent No. 6,709,387 to Glukhovsky et al.

In regards to claims 26, 28 and 33, Gazdzinski and Takahashi discloses a capsule medical device but are silent with respect to external device transmits a command for switching an imaging mode based on a position of said capsule medical device in the body cavity. Glukhovsky et al. teach of an analogous in vivo camera system that has a sensor 11 which measures motion directly or indirectly and is attached to, or placed within the capsule 6 and relays the value of the measured motion-related physical property to data processor 14 and is used to control the frame capture rate (see Col. 4, Lines 35-59). It would have been obvious to one skilled in the art at the time the invention was made to have a force acquiring device for detecting movement of the capsule in the apparatus of Gazdzinski and Takahashi to enable control over the imaging mode of the capsule as taught by Glukhovsky et al.

Response to Arguments

Applicant's arguments with respect to claims 11, 14-16, 24 and 26-28 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Kasztejna whose telephone number is (571) 272-6086. The examiner can normally be reached on Mon-Fri, 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJK
MK
11/3/05

BEVERLY M. FLANAGAN
PRIMARY EXAMINER